

THE STATE OF NEW HAMPSHIRE

SULLIVAN, SS

SUPERIOR COURT

Docket No. 09-E-0039

State of New Hampshire
Department of Environmental Services

SEP 08 09 17 2009

v.

Deborah Mae Fife, Ross Realty Trust, and Tippecanoe Campground, Inc.

CONSENT DECREE

NOW COME the parties, the State of New Hampshire Department of Environmental Services by and through their attorneys the New Hampshire Office of the Attorney General ("State" or "Department") and Deborah Mae Fife, Ross Realty Trust, and Tippecanoe Campground, Inc ("Defendants") and hereby agree to undertake the following in settlement of the claims asserted by the State in this case.

FACTS

1. This Consent Decree is entered into, by, and between the State and the Defendants to provide for the resolution of the State's claims for injunctive relief and civil penalties against the Defendants for violations of the New Hampshire Fill and Dredge in Wetlands Act (RSA chapter 482-A, "Wetlands Act"), the New Hampshire Comprehensive Shoreland Protection Act (RSA 483-B "Shoreland Act"), and the New Hampshire Water Pollution and Waste Disposal Act (RSA chapter 485-A, "Water Pollution Act") on certain property owned by the Ross Realty Trust on Brook Road in the Town of Goshen, and is more particularly described as Town of Goshen Tax Map 209, Lot 97 (the "Site" or "Property").

2. The State filed a petition in this case on this day (the "State's Petition"), seeking both injunctive relief and civil penalties for the unauthorized alteration of significant wetland areas, the unauthorized installation of a fence in Rand Pond, the failure to install or maintain adequate sedimentation controls, the failure to maintain an adequate woodland buffer pursuant to the Shoreland Act, the alteration of the on-site sewage disposal system without approval by the Department of Environmental Services or oversight by a Professional Engineer, and the failure to abide by the terms of Wetlands Permit 2005-00559 and Administrative Order No. 08-032 WD.

3. The Defendants admit to the allegations contained in the State's Petition.

4. The parties now enter into this Consent Decree in order to avoid the expense and uncertainty involved in litigation and to resolve all the issues raised in the State's Petition.

NOW THEREFORE, it is ORDERED, ADJEDGED and DECREED as follows :

CIVIL PENALTY

5. The Defendant shall be assessed a penalty of \$51,800 (Fifty-One Thousand Eight Hundred dollars) for the violations described in the State's petition.

6. Of the total amount assessed, the Defendant shall pay the State \$24,800 (Twenty-Four Thousand Eight Hundred dollars) pursuant to the following schedule:

- a) The Defendants shall pay the State \$4,800 by September 15, 2009;
- b) The Defendants shall pay the State an additional \$5,000 by September 15, 2010;
- c) The Defendants shall pay the State an additional \$7,500 by September 15, 2011;
- d) The Defendants shall pay the State a final payment of \$7,500 by September 15, 2012.

7. The remaining \$25,000 shall be suspended, but shall become immediately due if either:

- (a) The Defendants violate any provision of the Wetlands Act and its attendant administrative rules, the Shoreland Act and its attendant administrative rules, or the Water Pollution Act and its attendant administrative rules within four years of the entry of this Consent Decree as an order of the Court, or;
- (b) The Defendants violate any provision of this Consent Decree.

8. The suspension of penalties is contingent upon the Defendants' completion of the spring wetland restoration plantings described below. This suspension of penalties shall become final and the suspended penalty forever waived by the State upon

- a. completion of the spring wetland restoration plantings, and
- b. the passage of four years from the entry of this Consent Decree as an order of the Court without any violation by Defendants of the Wetlands Act and its attendant administrative rules, the Shoreland Act and its attendant administrative rules or the Water Pollution Act and its attendant administrative rules or any provision of this Consent Decree.

9. All payments shall be paid by check drawn in the name of "Treasurer, State of New Hampshire," and mailed to Department of Justice, Environmental Protection Bureau, 33 Capitol Street, Concord, New Hampshire 03301, Attn: Evan J. Mulholland.

INJUNCTIVE RELIEF

10. The Defendants shall, by July 15, 2009, complete the spring wetland restoration plantings in accordance with the plan prepared by SFC Engineering Partnership, Inc., and Gove Environmental Services, Inc., dated November 7, 2007, as received by the New Hampshire Department of Environmental Services on November 16, 2007.

11. Prior to August 1, 2009, the Defendants shall either:

- a) submit an approvable amended plan that depicts Pump Station #6, as installed, and depicts the manner in which Pump Station #6 is connected to the existing subsurface disposal system; or
- b) resubmit a complete set of amended plans for the entire subsurface disposal system, produced by Randy Bragdon of Skowhegan Engineering.

Additionally, the Defendants shall, by August 10, 2009, submit a request to the Department's Subsurface Bureau for a waiver of the requirement that any part of the sewage disposal system be set back 75 feet from Rand Pond. If such waiver is granted by the Department, the retaining wall adjacent to Pump Station #6 shall remain in place, but if such waiver is denied, the retaining wall and Pump Station #6 must be removed and the former location thereof must be graded and seeded as soon as possible.

12. Concurrent with the submission of the waiver request to the Department's Subsurface Bureau, the Defendants shall submit an application to the Wetlands Bureau for approval to retain the portion of wall constructed in the bed and bank of Rand Pond.

STIPULATED PENALTIES

13. The Defendants agree that for every day beyond July 15, 2009 that the Defendants do not complete the required plantings, the Defendants shall pay a stipulated penalty in the amount of \$500 per day.

TIME OF THE ESSENCE

14. In every instance where a particular date is established for compliance with a term in this Consent Decree time is of the essence in compliance with said term. Compliance with each deadline must be achieved on each respective date by the Department's close of business, namely 4 p.m. Failure to meet any deadline shall constitute a violation of this Consent Decree.

If a deadline falls on a weekend or a holiday (as defined in RSA 288:1), the deadline shall be the following business day.

MODIFICATION AND AMENDMENT

15. Any modification or amendment to any portion of the requirements for performance specified herein is subject to, and shall be effective only upon, the prior written approval of the State. Permission to extend any deadline specified herein shall not be unreasonably withheld.

RETENTION OF JURISDICTION

16. The Court shall retain jurisdiction to enforce, including by contempt order, the terms and conditions of this Consent Decree, to make modifications necessary to effectuate compliance with the Consent Decree, and to resolve all disputes arising hereunder as may be necessary or appropriate for the construction and execution of this Consent Decree. If the Defendants fail to comply with the requirements in this Consent Decree within the specified timeframe, the Defendants may be found in contempt of court and the Court may order relief as it deems justified.

OTHER TERMS

17. It is the intention of the parties that this Consent Decree be entered and enforced as an order of the Court. Once the order is entered by the Court, the Defendants acknowledge that any violation of the agreements contained herein shall be cause for them being adjudged in contempt of court.

18. The State's failure to enforce any provision of this Consent Decree after any breach or default shall not be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of its right to enforce each and all of the provisions of this Consent Decree upon any further breach or default.

19. The effective date of this Consent Decree shall be the date on which it is entered as an order of the Court.

20. This Consent Decree shall be construed in accordance with the laws of the State of New Hampshire.

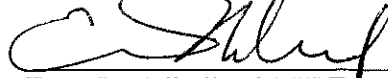
21. The parties agree that the civil penalty imposed hereunder is a fine or penalty payable to and for the benefit of a governmental unit pursuant to Section 523(a)(7) of the Bankruptcy Code, 11 U.S.C. § 523, and that if brought forward, the total amount of the civil penalty is non-dischargeable in bankruptcy.

22. The civil penalty imposed herein shall not be tax deductible.

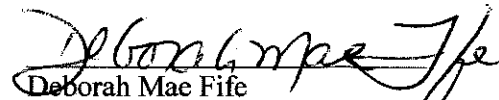
STATE OF NEW HAMPSHIRE
KELLY A. AYOTTE
ATTORNEY GENERAL

Dated: 9/4, 2009


By:


Evan J. Mulholland (NH Bar # 18038)
Assistant Attorney General
33 Capitol Street
Concord, New Hampshire 03301


Dated: 8/7, 2009


Deborah Mae Fife

Dated: 8/7, 2009


Ross Realty Trust, by its Trustee, *Duty authorize*
Deborah Mae Fife

Dated: 8/7, 2009


Tippecanoe Campground, Inc., by its
President, *Deborah Fife* *Deborah Fife Pres.*

Dated and entered this 11 day of Sept, 2009.

SO ORDERED.


Presiding Judge

PHILIP P. MANGONES
PRESIDING JUDGE